1941.

Department of Revenue.

OFFICE of the Board of Revenue

STATION Madras

Misc No. 2948

5287
A1

Dated 1.11.41

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Pages in the file 07 14 Pgs
xf 7

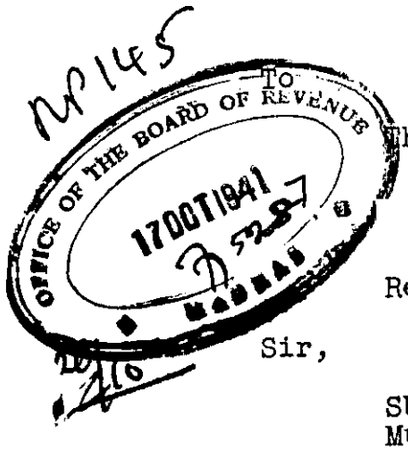
(SUBJECT.)

Suit Bellary District
Munsiff's Court O.S. No. 322/41
Narumamuram Village — S No. 47.
Transfer from Govt to Wakf. Objection
Defence Sanctioned

From

I.M.Fraser Esquire, I.C.S.,

Collector of Bellary, Bellary.



To

The Secretary to the Board of Revenue,

Chepauk, Madras.

Ref.-R.O.C.3202/41-A1. dated 13-10-41.

Sir,

SUITS - O.S.No.322/41 on the file of the District Munsif - Magalam Govinda Rao - Plaintiff - Transfer of S.No.47 of Naranapuram village from dry to wet - Suit against Government - Draft written statement - Submitted for approval.

Sri.Govinda Rao Magal, son of Guru Rao, a resident of Harapanahalli town has filed a suit, O.S.No.322/41 in the District Munsif's Court, Hospet, impleading Government as a defendant. I enclose a copy of the plaint filed by hi.. and request that sanction may be accorded to the defence of the suit.

2. The following is a brief history of the case.-

S.No.47, measuring Acres 1.76, of Naranapuram village, Harapanahalli taluk, was a Government dry land standing registered in the name of Magalam Vedagiri Rao, the second -- defendant. The registered holder applied for its transfer to wet under the Naranapuram tank. It was transferred to - wet in this office D.Dis.3751/40-A3, dated the 29th August 1940 after duly considering the objections put forth by Sri. Govinda Rao Magal. Thereupon the objector gave a suit notice to the Collector on 30-9-40. The matter was reconsidered by my predecessor, Mr.A.D.Crombie, who informed the petitioner that the threatened suit was awaited. The objector then put in a petition to the Board and it was forwarded to this office for remarks with the Board's Ref.No.F.6844/40-1 dated 16-12-40. The matter was again enquired into and a report was submitted to the Board in this Office R.O.C.No.5658/40-A3 dated 8-2-41, upon which the Board found no reason to interfere with the -- orders of my predecessor and rejected the petition put in by

Sri.Govinda Rao Magal in its proceedings Routine No.1532, - dated the 25th March 1941. The present suit is the outcome of these orders.

3. The plaintiff has also filed another suit in O.S.No 113/41 in the District Munsif's Court, Hospet, regarding his right to irrigation of S.No.17, 68, 70 and 71 of Naranapuram village and S.No.254-A of Togarikatti village from the drainage channel of the Naranapuram tank. The Board has sanctioned its defence in its proceedings No.1308, dated the 17th May 1941. This has not yet been disposed of.

4. From the above facts it is seen that the plaintiff is a litigant and is unnecessarily dragging the Government into Civil Courts.

5. A draft written statement prepared by the Government Pleader, Bellary, to be filed on behalf of the Government in the District Munsif's Court, Hospet, is enclosed for approval. The reason for paragraph 7 in the written statement is that the plaintiff presented a petition to the Jamabandi Officer this - year asking that S.No.67 (Should be 17) be transferred from dry to wet.

6. The summons were served on the 28th June 1941 and the suit which was posted to hearing on 22-9-41 has been adjourned to -- 3-11-1941.

7. This Office D.Dis.3751/40, dated 29-8-40 is enclosed.

G.V.Rao

Collector.

MRN/13-10.

End.

1. Copy of the plaint. } Sent By Regd. Post.
2. Draft written statt. } Sent By Regd. Post.
3. D.Dis. 3751/40 of 29/8/40

In the Court of the District Munsif of ~~Bellary~~ HOSPET.

O. S. No. 322 of 1941.

Between.-

Govinda Rao Magal. .... Plaintiff.

And

1. The Provincial Government of Madras. (Province of Madras)
2. Magalam Vedagiri Rao. } .... Defendants.

Written Statement on behalf of Government, -- (1st Defendant) under Order VIII, Rule 1, C.P.C.

1. This defendant denies all the allegations in the plaint except those which are specifically admitted herein and puts the plaintiff to strict proof of the same.

2. The allegations in paragraph 4 that the lands referred to in the said para were fed by "Low Level or Drainage Channel" is denied. The plaintiff has no rights in regard to the "low-level or drainage channel" which is not a recognized source of irrigation. The legitimate source of irrigation for the plaintiff's lands is the channel c

3. The plaintiff is put to strict proof of the allegations in paras 7 to 10.

4. The allegations in para 11 of "official interference" with any bonafide acts of the Plaintiff are denied.

5. The Plaintiff is put to strict proof of the allegations about diversion of water by owners of S.Nos.47 and 67. That there was any official connivance of such acts if true is denied. The allegation is mischievous and reckless.

6. The Collector of the District was justified in transferring S.No.47 from Dry to Wet under the Board Standing Orders and the same has been approved by the Board after considering the objections of the Plaintiff. [There is no cause of action for the plaintiff -- and the plaintiff is not entitled to any damage or any other relief in respect of official acts done in accordance with law.]

7. The suit is bad for misjoinder of causes of action in respect of apprehended orders in respect of S.No.67.

8. The Plaintiff's suit may be dismissed with costs.

9 × × — To be added as pp 5+6 wf.

Advocate for)
Defendant.)

Defendant.

Verification.

I, I.M.Fraser, Collector of Bellary, do hereby declare at Bellary this 13th day of October 1941 that what is stated in all the paras hereof is true to the best of my knowledge and information which I believe to be true.

Defendant.

/True Copy/

(5)

Plaint Dated.

In the court of the District Munsiff, Hospet.

O.S.No.328 of 1941.

Govind Rao Magal — Plaintiff.

and

1. Province of Madras, — Defendant

2. Magal Vedagiri Rao

Plaint under Order VII rule 1 C.P.C. and section 79 and 80 Cr.P.C. and order XXVII Section 79 C.P.C.

1. Govind Rao Magal, major, son of Guru Rao, Brahmin, age 70 years, Agriculture, Resident of Hirapanahalli -- Plaintiff.

Address for service:-

II.(1) Province of Madras represented by the Collector, Bellary — Defendant.

Address for service:

Collector, Bellary

(2) Magal Vedagiri Rao, major son of Venkoba Rao, Brahmin, age 40 years, Agriculture, resident of Goverahalli, Harpanahally Taluk. — Defendant.

Address for service:

Magal Vedagiri Rao, Goveranahally, Harpanahally Taluk.

III. The plaintiff is the owner of the lands S.Nos.17, 46, 68, 70 and 71 of Narnapur village of Harpanahally taluk, and No.254 of Togarikatty of the same taluk. Out of these, S.Nos.17, 68, and 71 are Government wet lands and the rest are double crop Inam lands.

IV. Nearly 20 years ago all these lands together with S.Nos. 46, 47 and 67 etc., were wet lands. These lands were fed by one and the same channel the "low level channel" or the "drainage channel" by whatever name it might be called, in the Narnapur Ayacut.

These lands being far away from the Narnapur tank which is the prescribed source of irriga ion for these lands had the disadvantage of being easily irrigated.

V. Out of these lands the plaintiff's lands S.No.68, 70 and 71 of Narnapur and 254 of Togarikatty are farthest from the tank and are at the tail end of their irrigation channel and hence had greater difficulty to be irrigated.

VI. On account of this difficulty the Plaintiff applied for the transfer of his Government wet lands to dry to the settlement authorities nearly 20 years ago, i.e., during the resettlement of Harapanahalli taluk.

VII. Similarly the owners of S.No.47 and 67 also applied for the transfer of their wet lands to dry. While they succeeded and got their lands transferred to dry, the plaintiff's lands which are the farthest to the tank and the channel were left as wet as before.

IX. This was an apparent error and the plaintiff's son subsequently applied to the sub-Collector of Hospet for the rectification of the wrong.

X. And enquiry was started when the plaintiff stated that as the intervening lands S.Nos.47 and 67 had been transferred to dry, it automatically stopped their interference with the water that flowad to the plaintiff's lands further down, and hence the plaintiff would try its effect by retaining his lands as wet as before etc., Thus his lands were not transferred to dry then.

XI. However the plaintiff's lands were not easy to be irrigated due to the official interference with the use of his channel etc., and the plaintiff was not able to raise any wet crop worth the name in his lands.

XII. Though labouring under these disadvantages, yet the plaintiff all these 20 years has been paying the wet assessment and has retained his lands as wet as ever before, without any profit and has thus preserved his water right while the owners of S Nos.47 and 67 have enjoyed the benefit of their lands being transferred to dry by saving the payment of wet assessment.

XIII. In addition to this advantage the owners of S.Nos.47 and 67

and 67 some times attempted to divert the channel water to the dry crops in their lands either surreptiously or at the ~~xxxx~~ connivance of the local officials to which the plaintiff resented.

XIV. This eventially led the local officials to collaborate with the owner of S.No.47 and effec the transfer of the dry lands of S.No.47 to wet again, in spite of protest by the plaintiff.

XVI. The transfer of S. No. 47 dry land to wet has placed the plaintiff at the mercy of the owner of S. No. 47 in the matter of irrigating the plaintiff's lands which has directly interferred with his "water right" which he and his predecessors in title enjoyed from time immemorial. This has caused heavy loss to the plaintiff.

XVII. The plaintiff assesses only a nominal damage Rs.40/- (forty rupees) for the year 1940.

XVIII. In addition to this the plaintiff has information to the effect that the local officials are at work to transfer S. No. 67 also to wet which must necessarily interfere with the plaintiff's water right to a greater extent. Though this fact has been brought to the notice of the higher authorities, yet no action has been taken by them.

XIX. For purposes of court fees and jurisdiction the value of the suit is rupees fifty, that is Rs. 40/- damages plus Rs. 10/- for a declaration and injunnction under section 7 clause 1 and IV of this Court Fees Act.

XX. Cause of action arose on 30-9-40 when the plaintiff first heard of the transfer of S. No. 47 to wet and when he sent a suit notice to the first defendant. The cause of action is also a continuing one.

XXI. It is prayed that the Honourable Court ~~xx~~ may be pleased to declare

(a) that the use of the water in the "low level" or "drainage channel" by the owners of the dry lands S. Nos. 47 and 67 will interfere with the water right of the plaintiff to his long standing wet and double crop Inam lands S. Nos. 48, 68, 70, 71 of Nannapur and 254 of Nogarikatty.

(b) to give a permanent injunction to the 1st defendant restraining him from permitting the water in that channel being used to the dry lands S. No. 47 and 67 of Karnapur village of Harpanahalli taluk.

(c) to give a permanent injunction to the 2nd defendant restraining him from using the channel water to his land S. No. 47.

(d) to award the damage rupees forty (Rs. 40/-) to the plaintiff together with interest and costs by the defendants.

(e) to give such other and further relief to the plaintiff as this Honourable court might deem fit and proper.

xx xx xx

The facts stated in this plaintif are true to the best of my knowledge and information and I have signed this at Hospet on

(sd) Govinda Rao Magal.

[G.W.P.]

DRAFT FOR APPROVAL.

	Date.	Initials.
When received for fair copying ..		
When copied ..		
When examined ..		
When signed ..		
When despatched.		

SUBJECT:— Suits. — (Bellary) — Hospet Dt. Munsiff's court. — C.S. No. 322/41 — Naranapuram vge. — S. No. 47 — Transfer from dry to wet. — Objn. — Defence - Sanctioned.

READ AGAIN _____, dated _____ 19____

" " _____ " _____ 19____

READ *ALSO*:—

F. No. 5287/41 From the Coll^r, Bellary, No. A1-3202/41 dated 13-10-1941 | G.

" _____ " _____ " _____ " _____ 19____

" _____ " _____ " _____ " _____ 19____

~~Order~~ Ms. Resolution ~~Rout.~~ No. 2948, dated 1-11-40 19 41

The Bd sanctions the defence of the suit and approves the draft written statement submitted by the Collector subject to the following modifications.

(ii) Para 2. Add the following at the end. = "The plaintiff has no rights in regard to the "low-level or drainage channel" which is not a recognized source of irrigation; the legitimate source of irrigation for the plaintiff's lands is the Channel called the Salapatty Channel. A

) for the words "the Provincial Govt. of Madras" shown as deft. at the top substitute "the Govt. of Madras"

Patron 'A' p2 Nf

decision to this effect has been given by the High Court in S.A. No. 66 of 1933. The plaintiff is estoppel by the principle of Res-Judicata from re-agitating the matter in the present suit".

(iii) Para 6. Recast as ~~follows~~ shown below

" This defendant avers that in virtue of its sovereign rights to regulate and distribute the supply of water from its sources, it has at all times the power to authorize or to withhold the supply of water to any land. By virtue of such powers the Coth of the district transferred S.No. 47 from dry to wet under B.S.O for valid reasons and the same has been approved by the Board after considering the objections of the plaintiff. The plaintiff is not entitled to question the Sovereign rights of this defendant.

Portion 'B' at 4 n.f.

~~This defendant~~ The plaintiff has not sustained any damage as a result of the transfer of S.No. 47 to him. ~~nor has it~~ This defendant has not interfered with the plaintiff's right to irrigate his land from their legitimate source viz., Salapatty Channel As apprehended by the plaintiff, and ~~that~~ the plaintiff is not entitled to any reliefs on account of his apprehensions"

Space reqd - marking case for very urgent - special

(iii) For the ~~words~~ "Provincial Govt. of Madras" occurring at the top of the draft written statement substitute the ~~words~~ "Province of Madras"

'C' at p. 4 n.f

(iv) Add the following as para 9.

"9. The suit is ~~false and~~ vexatious and frivolous to the knowledge of the plaintiff, and therefore this defendant claims compensation from the plaintiff under Section 35.A. of the Code of Civil Procedure

order at pp 5 & 6 n.f

To The Collr of Bellary
with enclosure for com. D.Dis 3151/40

Encls to Pay. Rep. (Dept.)

Advn
31.10.41

31.10.41

11/11/41

Hearing 3-11-41 Note File.

Subj: Suits - (Bellary) - ~~Hospanahalli~~ Tk. — Hospet Dt. Munsif's court. O.S. No 322/41 — Navanapuram vlg. — S.No 47 — Transfer from dry to wet — Objection - Defence - Govt

F. 5287/41.

A 3(4) Th ~~with~~ seen Ir 27.10.41

pp 1-2 ?

Reqce: Bellary Coll's Roc A1-3202/41 dt 13/10/41

To A.S.(J).

This is a suit for a declaration that the use of the water in the "low level" or "drainage channel" by the owners of the dry lands S.No 47 and 67 of Navanapuram vlg will interfere with the water-right of the plaintiff to his long-standing wet and D.C. in land S.No 48, 68 etc. of the vlg, for an injunction against Govt from permitting water to be taken to the Coll has sent a draft written Statement prepared by the Govt Pleader, Bellary to be filed in the Dt Munsif's court Hospet on behalf of the Govt.

Govt. para XXI - pp 9-10 of plaint. S. Nos 47/67, for damages of 40 & other relief. pp 3-4 & 7

2) In para 2 of his letter, the Coll has given a brief history of the case. He requests that sanction may be accorded to the defence of the suit and that the Draft written Statt may be appd. Sanction may accordingly be accorded which is in order may be and the D.W.S. appd.

Addn 25.10.41

Note by Dy Section

[illegible] P. T. O.

Sketch at p 53 of (P)

Note by H Section

The first point which may be noticed in this case is that, as in O.S. No. 113 of 1941, (dealt with in B.P. Mis No. 130 of 17.5.1941) the plaintiff is asserting a right to the use of what he calls "the low level or drainage channel" which starts as a spring channel in S.No. 197 of Naranapuram Village. The position assumed by the Govt. in defending O.S. No. 113 of 1941 is that the legitimate source of irrigation of the plaintiff's lands is the Salpathy Channel which takes off from sluice No. 2 of the Naranapuram tank, and not the "low level channel", which is not a recognized source of irrigation, and further that in regard to five out of the six lands in respect of which the plaintiff claims a right to irrigate from the "low level channel", the matter is Res judicata by virtue of a decision of the High Court in a previous case. A statement to this effect has to be made in the present suit also. The following sentences may therefore be added to paragraph 2 of the draft written statement:—

"The plaintiff has no rights in regard to the "low-level/drainage channel" which is not a recognized source of irrigation; the legitimate source of irrigation for the plaintiff's lands is the Channel called the Salpathy channel. A decision to this effect has been given by H.

^ vide para IV, p 9 c f of (D)

* para IV, p 5 c f.

Vide sketch at p 53 c f of (P)

para 8, p 24 c f of (D)

para 6, p 23 c f of (D)

A - p 3 c f

the High Court in S.A. No. 66 of 1933. The plaintiff is estopped by the principle of Res-Judicata from re agitating the matter in the present suit. For orders.

2/- The next point is in regard to the transfer from Dry to wet of SN. 47 and of its possible effect on the irrigation of the plaintiff's lands. The Board went into the merits of this question while passing orders in its proceedings Rt No. 1532 dt 25.3.41. A further examination is not necessary. ~~The para 6 of the D.W.S. however may be read as shown below:-~~

~~Note for the last sentence in para 6 of the D.W.S. written statement:-~~

"The transfer has not interfered with the plaintiff's rights to irrigate his lands from their legitimate source, Viz the Salpathy Channel. The plaintiff has not sustained any damage as a result of the transfer He has therefore no cause of action against this defendant." For orders

3/- The third point is in regard to the supply of water to SN 67 which is a dry land. Para 3 of the EAO's report dt 28.2.41 shows that no such supply is in fact under contemplation and that the plaintiff is asking for an injunction against the supply to this land is only a

-tve

Refer in (Z)

21-22 of (Z)

vent to his apprehensions. With reference to this the following may be added as paragraph 7 of the Draft written Statement:—

"This defendant avers that in virtue of its Sovereign rights to regulate and distribute the supply of water from its sources it has at all times the power to authorize or to withhold the ~~to withdraw~~ supply of water to any land. ~~By virtue of such powers the Collr. of [illegible] transferred [illegible] S.No. 67 of Narasapuram Village [illegible] S.No. 47) from dry to wet. & under B. S. O. No. [illegible] provided that valid reasons exist & the same has been approved by the Board after considering the objections of the plaintiff~~ The plaintiff cannot is not entitled to question the Sovereign rights of this defendant. This the plaintiff has not sustained any damage as a result of ~~the~~ defendant ~~at the same time admits that~~ the transfer of S.No. 47) to wet nor has it interfered with ~~the question of granting a supply of water to~~ the plaintiff's right to take his lands from ~~S.No. 67 is [illegible] under its contemplation~~ legitimate source viz: Salpatty channel. As apprehended by the plaintiff, and that the plaintiff is not entitled to any reliefs on account of his apprehensions." Inserts

4/- Paragraphs 7 and 8 of the draft written Statement may be re-numbered as paragraphs 8 and 9 respectively. Orders. p 4 c f

5/- According to B.P. Mis No. 2930 & 14-9-1937, ~~the~~ in suits by or against the Govt., the Govt. are to be described as the "Province of Madras". ~~for the words "Province of Madras" occurring at the top of the~~ the words "Provincial Govt. of Madras" in the draft written Statement, ~~Descriptions are therefore to be amended~~ the words "Province of Madras may be ✓ Rough copy at (T) p 3 c f.

substituted for cross.

KLS 25.10.41
HS 27.X.41

S.N.O. 47 was originally amended under the Court + the pltff cannot have any valid objection to his leave for amendt. The suit appears to be frivolous. If defence may be sanctioned and the S.W.S. approved subject to the amendments proposed at A, B & C

If it is also seen that it lies between two wet lands that it cannot grow a dry crop for ever. (pages 3 & 4 of (I) below

MEG 27/10/41

MEG 27.10.41.

Joint Secy. 29 OCT 1941

Zec

I think I heard of some recent legislation in which it is provided that a rules under which it is possible for the judge to grant penal costs against a man brings a frivolous plaint

If this is so, please ask for such costs here

HMS 28/10/41

Note on the V.E draft we today.

HMS 28/X/41

HMS 28/10/41

F.S.

To J.S

p 63 of Book N. 19

Sec 35-A of the Civil Procedure Code provides for compensatory costs in respect of false or vexatious claims or suits. There is No other provision but this. A paragraph may be added to the draft-written Statement as paragraph 9 that "the suit is false and vexatious to the knowledge of the plaintiff and therefore from the plaintiff this defendant claims compensation) under sec

Sec 35 A of the Code of Civil Procedure Amendment

KB 29.10.41 / 31.X.41

The Member is probably referring to a discussion about this in the file relating to the amendment of the C.P. Act. I will look into this & put up the papers. (today)

LI

29/X

Received at 1.30 P.M on 30.X.41.

To J.S

To J.S (with Spl Officer's Report)

B.G Nos 2729 d 6.10.41 is put up at (N)

The discussion regarding legislation in regard to pipelines & taxations complaints respectively Member is at p19/N+27 of the B.G. It relates to Compensation for obtaining ~~over~~ attachment of injunctions on insufficient grounds & Compensation under §26 of the Provincial Insolvency Act

p19 N.F & N

p27 N.F & N

30/X/41

No. That is not relevant. I (a) will do. It can be added to the W.S

30/X/41

30.10.41

30.X.41

To A.S(I)

Draft submitted for favour of appl

A.S(I)

Thro' H

Thro' H/ Secy.

31.10.41

Seen. This is a very urgent matter but the office seems to be attending to it in a ~~leisurely~~ fashion. The clerk should see that this is despatched today in turn

J.T.6

31.10.41 / 31.X.41

1/11

This is an instance of lack of responsibility
on the part of the officer causing that the
rent comes off on 3/11/41 that is 2/11/41
is a Sunday. This cannot not be seen
now
1/11/41

Is indeed
ado
1.11.41

B.P.No. Misc. 2948
Dated. 1.11.41

Single Member
~~Two Members~~
Full Board

	I-A.	A.D.S. & L.R.	Assistant Secretary L.R.	Irrign.	Sep.Rev.	J.S. Secy.	M 3	M 2	M 1
1. Open file seen by			✓		✓				✓
2. Final draft seen by			✓						
3. Now circulated to			✓						
4. Initials									

Passed for record.

Secretary

Joint Secretary.

~~A.S.(L.R.)~~

A.S.(Irrign). 5/11/41

A.S.(Sep.Reve).

A.D.S.& L.R.

I.A

Note:- Entries not required to be scored out.

4/11/41